

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLANT**

76-7229

United States Court of Appeals
FOR THE SECOND CIRCUIT

NO. 76-7229

VINCENT J. TRANTOLO,
Plaintiff-Appellant,
v.

JOSEPH T. GORMLEY, JR., ET AL
Defendant-Appellees

APPEAL FROM DISTRICT COURT DISMISSAL OF ACTION
CLAIMING RESTRAINING ORDER

PLAINTIFF-APPELLANT'S BRIEF

WALDEMAR J. LACH, ESQ.
Attorney for the Plaintiff-Appellant
750 Main Street
Hartford, Conn. 06103

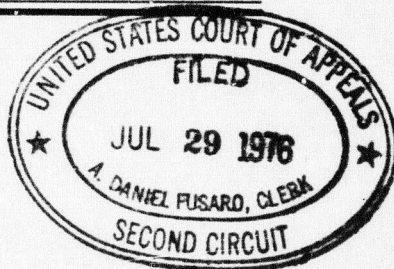


TABLE OF CONTENTS

	PAGE
ISSUE	1
STATEMENT OF THE CASE	2
ARGUMENT	4
CONCLUSION	6
CASES CITED:	
ALLEE V. MEDRANO	5
KUGLER V. HELFANT	2
SHAW V. GARRISON	6
YOUNGER V. HARRIS	2
STATUTE CITED:	
42 USC 1983	2

ISSUES

Did the Court err in dismissing plaintiff's petition praying an injunction against prosecution of a pending state criminal action without an evidenciary hearing on his allegations of bad faith and harassment?

STATEMENT OF THE CASE

This is an action charging violation of 42 USC 1983 by the defendants, all prosecutors for the State of Connecticut, so that the civil rights of the plaintiff were violated. The plaintiff sought temporary and permanent injunctions restraining the defendants from prosecuting him in the Connecticut courts. On the date set for the hearing on the Order to Show Cause, the District Court summarily dismissed the action without a hearing. Citing *Younger v. Harris*, 401 US 37 (1971). Plaintiff's motion requesting a reconsideration was likewise denied. Citing *Kugler v. Helfant*, 85 S. Ct. 1524.

Plaintiff's complaint (Record Document 1) in addition to jurisdictional matters, recited an incident of March 12, 1974, in which his personal belongings in a locker room were rifled by three young men and \$17.00 stolen from his wallet. This led to a chase, the use of force by the plaintiff in apprehending the thieves, complaint to the local (Windsor, Connecticut) police department, and the recovery of \$17.00 in the jacket of one of the three. Plaintiff sought several times, without success, to have the prosecutors regularly assigned to the Windsor division of the Connecticut Court of Common Pleas, Geographical Area 13, to apply for a warrant for the arrest of the thieves. During the time, information was developed that one of the men involved was the son of an academic official of a renowned private boarding school in Windsor. When the plaintiff continued to press for the arrest of the three, the local prosecutors became more and more evasive and finally relieved themselves of responsibility by referral of the matter to the Chief State Prosecutor of the Circuit Court stating to the plaintiff that the matter was "too hot to handle." The chief prosecutor assigned the matter to one of his assistants, who, however, continued the tactics of his predecessors.

After a fruitless four months wait, plaintiff wrote a letter of complaint concerning the prosecutors to the Governor of the State of Connecticut. Within a fortnight, two persons were arrested, the owner of the jacket and the plaintiff. The prosecutors now became vindictive, harassing the plaintiff and prosecuting in bad faith. The bad faith and harassment is charged in paragraphs 17, 18, 20, 21, 22 and 24 of plaintiff's complaint (Record Document No. 1 App. pages 1a to 3a).

Plaintiff was not permitted to offer in evidence any of the acts of the several defendants which constituted bad faith, harassment and other unusual circumstances.

ARGUMENT

Due process in the District Court proceedings required that the plaintiff be afforded an opportunity to be heard on the issue of whether he was being prosecuted in bad faith for the purpose of harassment and was suffering an irreparable injury.

Younger v. Harris, 401 US 37 (1971) sets out the proposition that the Federal Court will not intervene to prevent the prosecution of a pending state criminal action. The original holding in *Younger* was restricted to a case where the Federal Court would not intervene in the good faith prosecution of a statute which might be unconstitutional "on its face."

In reversing and remanding the matter, the Court amplified its reasoning by stating at 54:

"Appellee Harris has failed to make any showing of bad faith, harassment or any other unusual circumstances that would call for equitable relief."

In other words, the Court refused to impose its sanction to a good faith prosecution. The plaintiff's rights on the constitutional question could be resolved in the state proceeding. This case, now under consideration, is within the exception of *Younger v. Harris*. There are unusual circumstances, there is bad faith and there is harassment. The plaintiff is in the position of having to defend an illicit state criminal proceeding concerning the legitimate criminal statutes of the State of Connecticut. Questions of comity involving the procedures and doings of the state court are not involved. There is no claim of unconstitutionality of the statute as there was in *Younger*. Plaintiff does not seek federal protection from the action of the Connecticut courts. He seeks the shield of federal protection from the vindictive and bad faith persecution of the prosecutors who are mis-

using their office. The character of the bad faith harassment and vindictiveness can only be adequately demonstrated by testimony under oath. The proper way to determine whether the bad faith and harassment meets the test of *Younger* is a hearing and then appropriate findings and conclusions based on the evidence.

What we are seeking by this appeal is the limited remedy of a remand to the District Court in order that it may consider whether the plaintiff has met the exceptions set forth in *Younger*. It is an appropriate way to assure due process to the plaintiff. See *Allee v. Medrano*, 94 S. Ct. 2191 (1974) at 2202:

"If there are pending prosecutions remaining against any of the appellees, then the district court should make findings as to whether these particular prosecutions were brought in bad faith with no genuine expectation of conviction"

and at 2203:

"If there are pending prosecutions, then the district court should determine whether they were brought in bad faith, for purpose of harassing appellees and deterring the exercise of First Amendment rights, so that allowing the prosecution to proceed will result in irreparable injury to the appellees."

We do not deny that the plaintiff has the burden of proving an irreparable injury in the state proceedings but the denial of a hearing by the District Court has the effect of saying that the defendants would be irreparably injured if they were called to answer concerning the allegations of bad faith and harassment. It is difficult to imagine irreparable injury to them if, in fact, the defendants have been acting in good faith. On the other hand, if bad faith and harassment is found and if they had and were hiding behind

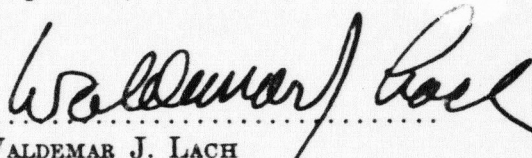
the "pending prosecution", then, indeed, irreparable injury to the plaintiff is actual, present and harmful.

"The finding of bad faith prosecution establishes irreparable injury both great and immediate for the purposes of the comity restraints discussed in *Younger*". *Shaw v. Garrison*, 467 Fed. 2d 113 (1972) at 122, certiorari denied 92 Sup. Ct. 467.

CONCLUSION

For all the above reasons, we respectfully request that the matter be remanded to the District Court for the District of Connecticut for a hearing to determine whether plaintiff has been harassed and prosecuted in bad faith and whether such would entitle him to the relief he seeks.

Respectfully submitted,

A handwritten signature in cursive script, reading "Waldemar J. Lach". The signature is written in dark ink and is positioned above a dotted line.

.....
WALDEMAR J. LACH

Attorney for the Plaintiff-Appellant